

CONTRACT #5
RFS # 331.45-015-08

Department of Education

VENDOR:
Middle Tennessee State
University

RECEIVED

MAY 11 2007

FISCAL REVIEW



STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
6th FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

PHIL BREDESEN
GOVERNOR

LANA C. SEIVERS, Ed.D.
COMMISSIONER

TO: Mr. Jim White, Fiscal Review Committee
FROM: Lana C. Seivers, Commissioner *LCS*
DATE: May 11, 2007
RE: Request to appear before Fiscal Review Committee regarding Request for Non-Competitive Contract RFS# 331.45-015-08

Please consider the enclosed information regarding a request for Non-Competitive Contract between the Department and Middle Tennessee State University.

The proposed contract will allow the vendor to provide the Federal mandated training for new and current teachers in the Career and Technical Education field across the State. The Department is responsible for conducting twelve trainings/conferences throughout the year with up to 2500 participants. We have worked with MTSU for the past years on a grant basis; however, it has been determined by the Department that this is a true fee for service arrangement with MTSU.

We are requesting a five (5) year contract to allow consistency in the planning and implementation of this training with an annual cost to the department of approximately \$750,000.00.

Thank you for your consideration.

CC: Dr. Timothy K. Webb,
Mr. Ralph Barnett
Mr. Dan Covington
Ms. Michelene McKinney
Ms. Samantha D. Law

To Doc
5/10

REQUEST: NON-COMPETITIVE CONTRACT

COPY

APPROVED

Commissioner of Finance & Administration
Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required.
A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #	331.45-015-08	
2) State Agency Name :	Department of Education, Division of Career and Technical Education	
3) Service Caption :	Coordination and Execution of Leadership Activities for Career and Technical Education	
4) Proposed Contractor :	Middle Tennessee State University	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	July 1, 2007	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	June 30, 2010	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$2,250,000.00	
8) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :		
<p>This contract will allow for the purchase of the following services:</p> <ul style="list-style-type: none"> • Coordination and execution of professional development workshops at the Career and Technical Education Summer Conference. • New Teacher Occupational Licensure training. • Fall Leadership Conferences for all Career and Technical Student Organizations. • School Counselors' Training Institute • Taskforce study group meetings on issues to be developed and presented to the State Board of Education. • Sessions to educate practitioners on changing requirements of the federal law. • Workshop for entire CTE division staff. 		
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :		
<p>Carl Perkins legislation requires that Career and Technical Education provide leadership activities for the Career and Technical students, teachers and directors across the state of Tennessee. The CTE Division does not have the in-house capacity to plan,</p>		

manage, and execute the number, variety, and size of professional development events included in the scope of this contract.		
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :		
<p>In prior years, the state agency has made grants to Middle Tennessee State University to provide professional development.</p> <p>It has been determined that these should have been fee for service contracts and therefore, in conjunction with the reauthorized Perkins Act, the State wishes to make this a fee for service arrangement.</p>		
12) Name & Address of the Proposed Contractor's Principal Owner(s) : (not required if proposed contractor is a state education institution)		
Middle Tennessee State University Murfreesboro, TN		
13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :		
Middle Tennessee State University has 20+ years of experience in the coordination and execution of the required leadership activities.		
14) Documentation of Office for Information Resources Endorsement : (required <u>only</u> if the subject service involves information technology)		
select one:	<input checked="checked" type="checkbox"/> Documentation Not Applicable to this Request	<input type="checkbox"/> Documentation Attached to this Request
15) Documentation of Department of Personnel Endorsement : (required <u>only</u> if the subject service involves training for state employees)		
select one:	<input checked="checked" type="checkbox"/> Documentation Not Applicable to this Request	<input type="checkbox"/> Documentation Attached to this Request
16) Documentation of State Architect Endorsement : (required only if the subject service involves construction or real property related services)		
select one:	<input checked="checked" type="checkbox"/> Documentation Not Applicable to this Request	<input type="checkbox"/> Documentation Attached to this Request
17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :		
<p>Surveys have been conducted of other university areas to determine the capability for the lodging of approximately 1,500 - 2000 attendees in addition to the capability of the university's infrastructure to have facilities available for the coordination and execution of the required leadership activities. MTSU is centrally located, offers free facilities or very low cost facilities and services, geographical access to conference facilities is best for the attendees, and ample lodging is available both on campus and in the immediate surrounding area.</p> <p>Two other universities in the area, TSU and Tennessee Technological University (TTU) have expressed interest in the coordination and execution of these activities, but the Division has concerns with both universities. In the case of TTU, adequate numbers of acceptable hotel rooms are not available to accommodate the number of participants. In the case of TSU, the university requires a substantially longer period to close out expenditures at the University level than the State is allowed by the Federal Government with regards to Perkins leadership funds. TSU is also located in the metropolitan Nashville area and there is concern about the availability of reasonable rates and ample accommodations for lodging for all the participants.</p>		
18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process : (Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)		
<p>The CTE division has checked with private vendors and the cost is prohibitive. MTSU provides services to the CTE division at a fraction of the cost of private vendors; the fee at MTSU is cost of the service, if at all, plus an 8 percent fee. Other universities contacted inform the CTE division that their costs are similar to the MTSU charges. However, other universities require a longer period to close out expenditures at the university level than the State is allowed by the Federal Government with regards to Perkins Leadership funds. Location of MTSU facilities and area lodging better meet the needs of the conference activities and attendees.</p> <p>MTSU has an office and a website dedicated to CTE Professional Development, has developed the capacity to serve new and changing professional development requirements on very short notice. The MTSU CTE office has provided reports on the costs, revenues, and arrangement details of individual events to assist state staff in planning and budgeting the professional development offerings. At a reasonable cost, MTSU provides virtually seamless event planning and management with excellent customer satisfaction from the event attendees and the State.</p>		
REQUESTING AGENCY HEAD SIGNATURE & DATE : (must be signed & dated by the procuring agency head or authorized signatory)		

Paul C. Seiner

Agency Head Signature

Date

5/9/07

C O N T R A C T S U M M A R Y S H E E T

8-8-05

RFS #	Contract #
331.45-015-08	
State Agency	State Agency Division
Department of Education	Career and Technical Education
Contractor Name	Contractor ID # (FEIN or SSN)
MIDDLE TENNESSEE STATE UNIVERSITY	<input checked="" type="checkbox"/> C- or <input type="checkbox"/> V- C626005794-00

Service Description			
Leadership-Fed Funded			
Contract Begin Date	Contract End Date	SUBRECIPIENT or VENDOR?	CFDA #
July 01, 2007	June 30, 2008	Subrecipient	84.048

Mark, if Statement is TRUE					
<input checked="" type="checkbox"/> Contractor is on STARS as required			<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts as required		
Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
331.45	332	25Z	25	RA7	ABT
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2008	\$0.00	\$750,000.00	\$0.00	\$0.00	\$750,000.00
TOTAL:	\$0.00	\$750,000.00	\$0.00	\$0.00	\$750,000.00

— COMPLETE FOR AMENDMENTS ONLY —			State Agency Fiscal Contact & Telephone #
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Perry Grimes - 615-253-4390
TOTAL:			
End Date:			

Funding Certification (certification, required by T.C.A., § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)

Contractor Ownership				
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input checked="" type="checkbox"/> NOT minority/disadvantaged
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—	
Contractor Selection Method				
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method		
<input checked="" type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Government	<input type="checkbox"/> Other		

Procurement Process Summary
The State Department of Education, Division of Career and Technical Education has a history of service with MTSU. Other state institutions have been contacted, and the requested services are either not available or the provider is not willing to work with the CTE division on providing the services. MTSU has an office dedicated to working with the division of CTE in providing requested services. Other providers do not have this arrangement.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF EDUCATION
AND
MIDDLE TENNESSEE STATE UNIVERSITY**

This Contract, by and between the State of Tennessee, DEPARTMENT OF EDUCATION, hereinafter referred to as the "State" and MIDDLE TENNESSEE STATE UNIVERSITY, hereinafter referred to as the "Contractor," is for the provision of Coordination and Execution of Leadership Activities for Career and Technical Education, as further defined in the "SCOPE OF SERVICES."

The Contractor is a State of Tennessee institution of higher education.

Contractor Vendor Identification Number: C626005794-00

Contractor Address: Box 46

Murfreesboro, TN 37132

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor shall plan, coordinate, and execute Professional development workshops/seminars for career and technical education teacher and administrators in TN School systems at the Career and Technical Education State conference with approximately 2500 participants. The conference arrangements will include:
 - a. Provision of State approved speakers;
 - b. Provision of rooms for sessions;
 - c. Provision of set-up and arrangement of audio-visual services for each session;
 - d. Provision of Dining arrangements at dining halls which includes but is not limited to scheduling, set-up, and order of catering for applicable events,
 - e. Provision of transportation; parking passes and scheduling of shuttle buses from parking lots to conference sites,
 - f. Provision of rooms either on the Contractor campus or hotels within a 15 mile radius of the campus. All hotel rooms must be provided at rates compliant with the current State travel regulations.
 - g. Provision of audio-visual services;
 - h. Creation, management, and update of conference website;
 - i. Creation and processing of on-line registrations for the main conference and several pre-conference sessions;
 - j. Creation of conference evaluation;
 - k. Provision of conference materials which include, but are not limited to folders, nametags, programs, flip charts, handouts, pens, markers, notebooks, signage, tape, boxes, and mailing services as specified and approved by the State;

- l. Provision of setup of staff conference headquarters,
 - m. Provision of assistance with registration,
 - n. Distribution, collection, and reporting of workshop and conference evaluation results. The evaluation report will be provided to the State within 30 days of the final day of the conference.
 - o. Record of attendance and providing a web based report to the CTE director for review,
 - p. Provision of travel claim forms to speakers and payment of travel.
- A.3. The Contractor shall plan, coordinate, and execute required occupational training for first year T&I and Health Science teachers in Tennessee. This occupational training shall occur in two sessions with 100 attending a five-day session in July and 20 attending a three-day session in January. The New Teacher Training arrangements will include:
- a. Provision of rooms for sessions,
 - b. Provision of set-up and arrangement of audio-visual services for each session;
 - c. Creation and processing of on-line registrations;
 - d. Creation of conference evaluation;
 - e. Provision of rooms either on the Contractor campus or hotels at a State-approved site. All hotel rooms must be provided at rates compliant with the current State travel regulations;
 - f. Provision of audio-visual services;
 - g. Provision of conference materials which include, but are not limited to nametags, agendas, signage, bags, pens and CDs as specified and approved by the State;
 - h. Provision of dining arrangements at dining halls which includes but is not limited to scheduling, set-up, and order of catering for applicable sessions;
 - i. Provision of assistance with registration;
 - j. Distribution, collection, and reporting of training evaluation results. The evaluation report will be provided to the State within 30 days of the final date of the conference.
 - k. Record of attendance and provision of a web-based report to the CTE director for review.
- A.4. The Contractor shall plan, coordinate, and execute four Fall Leadership Conferences for all career and technical students, student organization officers, and sponsors with approximately 10,000 students and sponsors participating. The Fall Leadership Conference services shall include:
- a. Provision of State-approved speakers;
 - b. Provision of rooms for sessions;
 - c. Provision of set-up and arrangement of audio-visual services for each session
 - d. Provision of Dining arrangements in the conference facility which includes but is not limited to scheduling, set-up, and order of catering;

- e. Provision of audio-visual services;
 - f. Provision of security and parking;
 - g. Creation, management, and update of the conference website;
 - h. Creation and processing of on-line registrations;
 - i. Collection of registration fees and provision of an accounting for revenues collected to the State;
 - j. Provision of conference materials which include, but are not limited to pins, folders, schedules, bracelets, facility maps, signage, flip charts, sponsor packets, envelopes, flyer, markers, highlighters, boxes, tape, and certificates as specified and approved by the State;
 - k. Coordinate speaker schedule and assist in assigning speakers and breakout rooms;
 - l. Provision of setup of conference headquarters;
 - m. Provision of assistance with registration;
 - n. Distribution, collection, and reporting of conference evaluation results. The evaluation report will be provided to the State within 30 days of the final day of the conference.
 - o. Record of attendance and provision of a web based report to the CTE director for review.
- A.5. The Contractor shall plan, coordinate, and execute three quarterly professional development workshops (in Fall, February, and Spring) for career and technical education administrators in TN school systems on issues/changes in career and technical education for approximately 150-175 participants. The CTE Directors' meeting arrangements will include:
- a. Provision of rooms for sessions;
 - b. Provision of set-up and arrangement of audio-visual services for each session;
 - c. Provision of hotel rooms on-site or within a 15 mile radius of the meeting. All hotel rooms must be provided at rates compliant with the current State travel regulations;
 - d. Creation and processing of on-line registrations for each meeting;
 - e. Provision of audio-visual services;
 - f. Provision of meeting materials which include, but are not limited to nametags, agendas, and DVDs as specified and approved by the State;
 - g. Provision of Dining arrangements which includes, but is not limited to scheduling, set-up, and order of catering for applicable events.
 - h. Provision of assistance with registration.
- A.6. The Contractor shall plan, coordinate, and execute a two-day state-wide conference known as "Building Bridges" focusing on the transition from secondary to postsecondary education for approximately 800 academic, career and technical teachers, counselors and administrators in TN school systems. The Building Bridges conference services will include:
- a. Provision of speakers approved by the State;

- b. Provision of rooms for sessions;
- c. Provision of set-up and arrangement of audio-visual services for each session;
- d. Provision of rooms either on-site or at hotels within a 15 mile radius of the site. All hotel rooms must be provided at rates compliant with the current State travel rates;
- e. Provision of audio visual services;
- f. Creation, management , and update of conference website;
- g. Creation of on-line call for proposals database;
- h. Creation and processing of on-line registrations;
- i. Creation of conference evaluation;
- j. Collection of registration fees and provision of an accounting for revenues collected to the State;
- k. Provision of Dining arrangements which includes, but is not limited to scheduling, set-up, and order of catering for applicable events;
- l. Provision of conference materials which include, but are not limited to notebooks, nametags, signage, flip charts, and "padfolios," and bags as specified and approved by the State;
- m. Record of attendance and provision of a web based report to the CTE director for review;
- n. Distribution, collection, and reporting of conference evaluation results. The evaluation report will be provided to the State within 30 days of the final day of the conference.

A.7. The Contractor shall plan, coordinate, and execute the School Counselor Training Institute for approximately 800 school counselors in February. The School Counselor Training Institute will presents the following subjects:

- issues and barriers to aligning academic and career and technical curriculum
- the ways career and technical education incorporates the related academic content (math, English, and science) into classroom instruction
- the ways high school Career and Technical Education subjects qualify as prerequisites or credit for postsecondary instructional programs
- tools to assist in career exploration, planning, and preparation, and
- ways to better serve students.

The School Counselor Training Institute services will include:

- a. Provision of State-approved speakers;
- b. Provision of rooms for sessions;
- c. Provision of set-up and arrangement of audio-visual services for each session;
- d. Provision of rooms either on-site or at hotels within a 15 mile radius of the conference site.

All hotel rooms must be provided at rates compliant with the current State travel regulations.

- e. Provision of audio visual services;
 - f. Creation, management and update of conference website;
 - g. Creation and processing of on-line registrations;
 - h. Creation of database for on-line call for conference session proposals;
 - i. Creation of the conference evaluation;
 - j. Collection of registration fees and provision of an accounting for the revenues collected to the State;
 - k. Provision of conference materials which include, but are not limited to notebooks, "padfolios," nametags, flipcharts, baggies, handouts, and agendas as specified and approved by the state;
 - l. Provision of Dining arrangements which includes, but is not limited to scheduling, set-up, and order of catering for applicable events;
 - m. Record of attendance and provision of a web based report to the CTE director for review;
 - n. Distribution, collection, and reporting of conference evaluation results. The evaluation report will be provided to the State within 30 days of the final day of the conference.
- A.8. The Contractor shall plan, coordinate, and execute Taskforce study group meetings involving approximately 200 participants, collectively, to be conducted at various times during the fiscal year. These Taskforce study groups will meet to discuss various issues to be developed and presented to the State Board of Education. Taskforce Meetings will be held at either the Andrew Johnson Tower or Hardison Hall on the TPS campus. Taskforce Meeting services will include:
- a. Provision of staff nametags; and
 - b. Provision of Dining arrangements which includes but is not limited to scheduling, set-up, and ordering of catering for the applicable event.
- A.9. The Contractor shall plan, coordinate, and execute six professional development sessions to keep the state staff and local administrators current on federal legislation requirements. The Federal Update services will include:
- a. Provision of State approved speakers;
 - b. Provision of meeting materials which include, but are not limited to DVDs as specified and approved by the State.
- A.10. The Contractor shall plan, coordinate, and execute one professional development retreat for staff of the Division of Career and Technical Education. The Staff Retreat services will include:
- a. Provision of rooms for sessions;
 - b. Provision of set-up and arrangement of audio-visual services for each session;
 - c. Provision of rooms at the state park;
 - d. Provision of audio-visual services;

- e. Provision of Dining arrangements which includes but is not limited to scheduling, set-up, and order of catering for applicable events;
- f. Provision of the retreat materials which include, but are not limited to shirts, cups, and bags as specified and approved by the State;

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on July 1, 2007 and ending on June 30, 2008. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than three (3) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract, and shall be based upon rates provided for in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Seven Hundred Fifty Thousand Dollars and No Cents (\$750,000.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

SERVICE UNIT/MILESTONE	AMOUNT
CTE Summer Conference	\$350,000.00/upon completion
New Teacher Training Summer	\$10,000.00/upon completion
Fall Leadership Conference	\$200,000.00/upon completion
CTE Directors' Meeting Fall	\$11,000.00/upon completion
Building Bridges Conference	\$52,000.00/upon completion
School Counselor Training Institute	\$39,500.00/upon completion
Taskforce and Study Group Meetings	\$5,300.00/upon completion

Federal Updates	\$31,000.00/upon completion
CTE Staff Retreat	\$19,000.00/upon Completion
New Teacher Training Winter	\$4,200.00/upon completion
CTE Directors' Meeting Winter	\$11,000.00/upon completion
CTE Directors' Meeting Spring	\$17,000.00/upon completion

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. Pursuant to ***Tennessee Code Annotated***, Section 9-4-604, the State is not to issue warrants for payments to persons who are in default to the State until such arrearages are paid. If applicable to the Contractor, the Contractor agrees that, should such an arrearage exist during the term of this Contract, the State shall have the right to deduct from payments due and owing to the Contractor any and all amounts as are necessary to satisfy the arrearage.

Should a dispute arise concerning payments due and owing to the Contractor under this Contract, the State reserves the right to withhold said disputed amounts pending final resolution of the dispute.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract or any amendment thereof until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least Forty-Five (45) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Any liability of the Contractor to the State and third parties for any claims, losses; or costs arising out of or related to acts performed by the

Contractor under this agreement shall be governed by the Tennessee Claims Commission Act, **Tennessee Code Annotated**, Section 9-8-301, *et seq.*

- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.7. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.8. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.9. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.10. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.11. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create a employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services.
- D.12. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.13. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.14. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.15. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.16. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Dianne Cashion
DEPARTMENT OF EDUCATION
4th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
Telephone Number: 615-532-4879
Fax Number: 615-532-8226

The Contractor:

Chris McKissack
MIDDLE TENNESSEE STATE UNIVERSITY
Box 46
Murfreesboro, TN 37132
Telephone Number: 615-898-2031
Fax Number:

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date.
- E.4. State Ownership of Work Products. The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the State under this Contract. The State shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law.
- E.5. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of ***Tennessee Code Annotated***, Section 12-7-101, et. sec., shall be printed unless a printing authorization number has been obtained and affixed as required by ***Tennessee Code Annotated***, Section 12-7-103 (d).
- E.6. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, and/or services. Such procurements shall be made on a competitive basis, where practical.

E.7. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

E.8. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

E.9. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor shall include the statement, "The following project is funded under an agreement with DEPARTMENT OF EDUCATION."

E.10. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.11. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This

prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

E.12. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principles:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

E.13. FERPA Compliance. The State and Contractor shall comply with the Family Education Rights and Privacy Act of 1974 (20 U.S.C. § 1232g) (FERPA) and its accompanying regulations (34 C.F.R. 99). Contractor warrants that it is familiar with requirements of FERPA and its accompanying regulations and that it will comply with all applicable FERPA requirements in the performance of its duties in this contract. Contractor agrees to cooperate with the State as required by FERPA and its regulations in the performance of its duties in this contract. Contractor agrees to maintain the confidentiality of all education records and student information and use such records and information for the exclusive purpose of performing its duties in this contract.

E.14. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

E.15. Public Accountability. If the Contractor is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN

AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

IN WITNESS WHEREOF:

MIDDLE TENNESSEE STATE UNIVERSITY:

John W. Cothern, Senior Vice President

Date

DEPARTMENT OF EDUCATION:

Lana C. Seivers, Commissioner

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

DEPARTMENT OF PERSONNEL:

Deborah E. Story, Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date